

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF MUSOMA

AT MUSOMA

LAND REVISION NO. 16 OF 2020

NURU GECHINDARO MAROAPPLICANT

VERSUS

METOHA OSTRICH COMPANY LTD1ST RESPONDENT

WAMBURA TAIBOYA2ND RESPONDENT

MANG'ERA CHACHA3RD RESPONDENT

MAACHANDI MATIKU KIRUKU4TH RESPONDENT

CHACHA MGAYA MGICHO5TH RESPONDENT

MASASATI KEGUKURE GECHINDORO6TH RESPONDENT

*(Originating from Land Application No. 115 of 2020 of the District Land and Housing
Tribunal for Mara at Musoma)*

RULING

27th July & 16th August, 2021

Kahyoza, J.

METOHA OSTRICH FARM Company Ltd (METOHA) sued Wambura Taiboya (2nd respondent), Mang'era Chacha (3rd respondent), Maachandi Matiku Kikuru (4th respondent), Chacha Mgaya Mgicho (5th respondent) and Masasati Kegukure Genchindoro (6th respondent) for declaration that METOHA is the legal owner of land in dispute and an order of vacant possession. Chacha Mgaya Mgicho and Masasati Kegukure Gechindara raised a preliminary objection in their reply to the METOHA's application.

METOHA also applied for temporary injunction praying for the *status quo* to be maintained. The trial tribunal before hearing the application for temporary injunction it scheduled to determine the preliminary objection.

Before the DLHT disposed the preliminary objection, Nuru applied to be joined as a party in the land dispute **METOHA** instituted on 8/10/2020. Later, the tribunal heard the preliminary objection and reserved its ruling. On the 3rd December, 2020, it delivered the ruling regarding the preliminary object. After it delivered the ruling, the tribunal made the following order before it afforded the parties an opportunity to air their views-

"(1) Hearing on 22/1/2021.

(2) The status quo be maintained in that the respondent are restrained from engaging new building operations and cutting down the trees thereon. The respondents allowed to plant seasonal plants three months".

Aggrieved by the above order, Nuru applied for revision.

The parties' advocate argued the application by written submissions. The applicant's advocate Mr. Emmanuel Nassoro submitted at length that his client was not heard before the order affecting her was issued. He submitted that it was trite law that adverse orders cannot be issued before parties likely to be affected by such orders are heard. To buttress his argument, he cited the case of **Margwe Erro & 2 others V. Moshi Bahantu** Civil Appeal No 111 of 2014 CAT at Arusha (unreported) at page 4, where the Court of Appeal held with approval from the case, **Abbas**

Sherally & Another Vs. Abdul S. H. Mfazaboy Civil Appl. No. 33 of 2002 (unreported) where it was held that-

"The right of a party to be heard before adverse action is taken against such party has been stated and emphasized by courts in numerous decisions"

Mr. Mligo advocate conceded. He filed his submission to indicate that he was in agreement with the applicant's submission which was meritorious. I commend Mr. Mligo for not opposing application. It is not disputed that Nuru and the other respondents were not heard before the trial tribunal granted METOHA's prayer for maintaining the *status quo*. The law is settled that a party must be heard before an adverse order is issued. The Court of Appeal took that stance in the case of **Mbeya- Rukwa Autoparts And Transport Ltd V. Jestina George Mwakyoma** [2003] T.L.R. 251 where it stated that in Tanzania:

"...natural justice is not merely a principle of the common law, it has become a fundamental constitutional right Article 13(6) (a) includes the right to be heard among the attributes of equality before the law."

The tribunal ordered Wambura Taiboya (2nd respondent), Mangera Chacha (3rd respondent), Maachandi Matiku Kikuru (4th respondent), Chacha Mgaya Mgicho (5th respondent) and Masasati Kegukure Genchindoro (6th respondent) not erect new buildings or plant permanent crops without hearing them. The order affected Nuru whose application to be joined a party was not yet determined. It gave the order after delivering the ruling regarding the preliminary objection. It passed the orders before

hearing the parties. Thus, it violated Nuru's natural justice that is the right to be heard, it such an order cannot stand.

I, therefore, invoke my powers under S. 43(2) of the Land Disputes Courts Act, [Cap 216 R. E. 2019] to set aside the order to maintain the ***status quo*** and restraining the respondents from cutting down trees, engaging in constricting new buildings and planting crops other than season plants. I further order, the application for temporary injunction to be heard *de novo* and a ruling delivered, if METOHA still wishes the temporary injunction to be granted.

The costs shall be in due course.

It is ordered accordingly.



J. R. Kahyoza

JUDGE

16/8/2021

Court: Ruling delivered in the presence Ms. Twelve adv. holding Mr. Mligo's brief for the respondent and Mr. Emmanuel advocate for the applicant. B/C Makunja present.



J. R. Kahyoza,

JUDGE

16/8/2021